TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1922

No. [redacted] 148

THE PULLMAN COMPANY, PLAINTIFF IN ERROR,

vs.

FRIEND W. RICHARDSON, AS TREASURER OF THE STATE OF CALIFORNIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED AUGUST 12, 1922.

(28,424)

(28,424)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 469.

THE PULLMAN COMPANY, PLAINTIFF IN ERROR,

vs.

FRIEND W. RICHARDSON, AS TREASURER OF THE STATE OF CALIFORNIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 1, 1921.

1 In the Supreme Court of the State of California.

S. F. No. —.

THE PULLMAN COMPANY (a Corporation), Plaintiff and Appellant,

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant and Respondent.

TRANSCRIPT ON APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO.

Honorable Geo. A. Sturtevant, Judge.

2 In the Superior Court of the State of California in and for the City and County of San Francisco.

No. 87683, Dept. No. 8.

THE PULLMAN COMPANY (a Corporation), Plaintiff,

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant.

Complaint.

Plaintiff files this its complaint against defendant and for cause of action alleges that:

I.

Plaintiff is, and at all the times hereinafter mentioned was, a corporation organized and existing under and by virtue of the laws of the State of Illinois, and engaged in the business of furnishing sleeping cars and parlor cars to railroad companies in said State of California, and in all other states of the United States of America, some of said cars running entirely within the said State of California, and some from points without the state passing through said State of California to points in other states, and some running from points without the state to points within said state, and from points within said state to points without said state, but none of said cars during the year ending December 31, 1916, ran from points within California to other points within California and in the journey passed out of said state, except two sleeping cars which, during the period beginning January 1st, 1916, and ending December 31st, 1916, ran between the City of Oakland in said state and the

Town of Susanville, in said state, over lines of railroad partly within the State of California and partly within the State of Nevada. In all said cars plaintiff transacts, and at all times herein mentioned has transacted, a sleeping car business, viz: it furnishes, and at all said times has furnished to the passengers of said railroads while being transported in said cars as aforesaid berths and seats in said cars so running entirely within said state and in said cars passing through, into and out of said state as aforesaid, and personal attendance and service rendered to such passengers by the agents and servants of the plaintiff in connection therewith.

II.

Defendant now is and was at all times herein mentioned Treasurer of the State of California.

4 III.

The gross receipts of plaintiff on all of its said business beginning and ending entirely within said State of California for the year ending December 31st, 1916, was the sum of one million, fifty-three thousand, one hundred and forty-one and 34/100 ($1,053,141.34) dollars, which sum includes California's mileage proportion of all business done by plaintiff between points in the State of California but passing en route through a portion of the State of Nevada. The proportion of the gross receipts of plaintiff for said year ending December 31st, 1916, from all said business of plaintiff passing through, into or out of said state, equal to the proportion that the mileage within said state bore to the total mileage over which such interstate business of plaintiff was done was the sum of one million, twenty-five thousand, seven hundred and forty-three and 33/100 ($1,025,743.33) dollars.

IV.

Within the time prescribed by law, to wit, on or about the 12th day of March, 1917, plaintiff filed a report signed and sworn to by one of plaintiff's officers, namely, plaintiff's secretary, upon a form prescribed by the State Board of Equalization, and showing,
5 for the year ending said 31st day of December, 1916, in such detail and in manner and form as prescribed by said State Board of Equalization the various items of information required to be shown by section 9 of an act entitled, "An act to carry into effect the provisions of section 14 of Article XIII of the Constitution of the State of California, as said Constitution was amended November 8th, 1910, providing for the separation of state from local taxation, and providing for the taxation of public service and other corporations, banks and insurance companies, for the benefit of the state, all relating to revenue and taxation," approved April 1st, 1911, as amended February 3rd, 1913, as amended January 28th, 1915. In addition to the items so required to be shown said report contained the following statement:

"This company is and was during all of said year engaged in the business of furnishing sleeping cars and parlor cars to railroad companies in which passengers are transported, some of which cars run in the State of California, and some run between points in the State of California but pass en route through a portion of the State of Nevada; and, in the transportation of passengers in interstate commerce, some run from other states into California and out of California into other states, and some of such cars pass through
6 the State of California. In all such cars this company transacts a sleeping car business and furnishes to the passengers berths and seats in its cars in the State of California, between points in the State of California but en route passing out of the state, and from other states into the State of California, and from California to other states, and in and on cars that pass through the State of California. That under said item 15 there is stated the gross receipts from such classes of business as said State Board of Equalization has designated in its blank report to be reported separately, and that each item of gross receipts so shown in this report contains and includes that proportion of the gross receipts from the business passing through, into and out of the State of California as above stated which the mileage within that state bears to the total mileage over which such interstate business was done, as defined by sections 2 and 7 of chapter 335 of the Statutes of California of 1911, approved April 1, 1911, as amended by chapter 6 of the Statutes of 1913, approved February 3, 1913, as amended by chapter 2 of the Statutes of 1915, approved January 28, 1915, and as required by paragraph 8 of section 9 of said chapter 335 as amended by chapter 320 Statutes of 1913, approved June 12, 1913.

7 The amount of gross receipts from business beginning and ending within the State of California as defined by said sections 2 and 7 of said chapter 335 was $1,053,141.34 which amount includes California's mileage proportion of all business done by this company between points in the State of California but passing en route through a portion of the State of Nevada.

The proportion of the gross receipts from interstate business, being the proportion upon the mileage basis as stated above, and as provided and defined in said sections 2 and 7 of said chapter 335, and in paragraph 8 of section 9 thereof, as amended by chapter 320, Laws of 1913, amounted to $1,025,743.33.

The Pullman Company protests that no portion of its receipts from its business done in its cars from other states into California or from California into other states, or from other states passing entirely through California to points beyond California is taxable in or by the State of California, and that no portion thereof may lawfully be taxed in or by the State of California, and that any tax levied by the State of California upon its interstate business as above stated, or upon the revenue therefrom, will constitute a burden upon interstate commerce, and will violate the provisions of article 1,
8 section 8, of the Constitution of the United States, and will tax the business and property of said company beyond and without the State of California."

V.

At some time between the first day of April, 1917, and the third Monday before the first Monday in July, 1917, the exact time being to plaintiff unknown, said Board assessed and levied a tax of three and 95/100 (3.95) per cent, upon said gross receipts of plaintiff for the year ending December 31st, 1916, on all business of plaintiff beginning and ending entirely within said state, which amounted to one million, fifty-three thousand, one hundred and forty-one and 34/100 ($1,053,141.34) dollars, as aforesaid, and on that proportion of the gross receipts from all plaintiff's business passing through, into or out of said state that the mileage within said state bore to the total mileage over which such interstate business was done, which amounted to one million, twenty-five thousand, seven hundred and forty-three and 33/100 ($1,025,743.33) dollars as aforesaid, to wit, upon the total sum of two million, seventy-eight thousand eight hundred and eighty-four and 67/100 ($2,078,884.67) dollars; said tax amounted to the sum of eighty-two thousand, one hun-
9 dred and fifteen and 96/100 ($82,115.94) dollars, and was assessed to the plaintiff.

VI.

On or about the 22nd day of June, 1917, plaintiff being dissatisfied with said assessment of taxes against it upon the gross receipts of and from its business for the year ending December 31st, 1916, as hereinbefore set forth, appeared before the State Board of Equalization and made written application to said Board to have said assessment of taxes corrected, which application was denied by said Board.

VII.

Thereafter, and in the month of July, 1917, the Controller of State of said State of California, by notice partly written and partly printed, dated July 1st, 1917, notified plaintiff of the levy of said tax for the year 1917, amounting to said sum of eighty-two thousand, one hundred and fifteen and 94/100 ($82,115.94) dollars, and that the same was then due and payable, and therein and thereby further notified the plaintiff of the time when said tax would become delinquent and the penalties to be added thereto if not paid. Said notice was received by the plaintiff at its office in Chicago, Illinois, in due course of United States mail on the 6th day of July, 1917.

10 VIII.

On or about the 2nd day of July, 1917, said Controller of State began the publication of a notice, which said notice appeared thereafter in three daily newspapers, one published in the City of Sacramento, one in the City and County of San Francisco and one in the City of Los Angeles, all in said State of California. Said notice

specified, first, that said Controller had received from said Board the record of assessments for state taxes; second, that the taxes therein assessed were due and payable on the first Monday of July, 1917, and that one-half thereof would be delinquent on the sixth Monday after said first Monday of July, 1917, at six o'clock P. M., and that unless paid to the State Treasurer at said City of Sacramento, prior thereto, fifteen (15%) per cent, would be added to the amount thereof, and unless paid prior to the first Monday of February, 1918, at six o'clock P. M., an additional five (5%) per cent, would be added to the amount thereof, and that the remaining one-half of said taxes would become delinquent on the first Monday in February, 1918, at six o'clock P. M., and if not paid to said State Treasurer at said City of Sacramento prior thereto, five (5%) per cent would be added to the amount thereof.

11 IX.

On the 10th day of August, 1917, at said City of Sacramento, plaintiff tendered to defendant, as Treasurer of said State of California, the sum of forty-one thousand, five hundred and ninety-nine and 8/100 ($41,599.08) dollars, gold coin of the United States of America, as the tax upon plaintiff's business for said year ending December 31st, 1916, and, at the same time and place, plaintiff served upon and delivered to defendant, as said Treasurer, a written notice and tender theretofore executed by plaintiff. Said defendant, as said Treasurer then and there accepted said written notice and tender and filed the same in his office, and then and there refused to accept said sum tendered as aforesaid, or any sum less than eighty-two thousand, one hundred and fifteen and 94/100 ($82,115.94) dollars.

X.

Thereafter, and on said 10th day of August, 1917, plaintiff claiming and protesting that a part of the said sum of eighty-two thousand, one hundred and fifteen and 94/100 ($82,115.94) dollars assessed to and levied against it by the said State Board of Equalization as taxes for the year 1917, to wit, the sum of forty thousand, five hundred and sixteen and 86/100 ($40,516.86) dollars
12 was void, paid to the defendant the said sum of eighty-two thousand, one hundred and fifteen and 94/100 ($82,115.94) dollars, and at the time of such payment to said defendant of said sum of eighty-two thousand, one hundred and fifteen and 94/100 ($82,115.94) dollars, the plaintiff filed with the said State Controller a written protest stating that it claimed and protested that a part of the assessment on which said sum of eighty-two thousand, one hundred and fifteen and 94/100 ($82,115.94) dollars was levied, assessed, based or computed, to wit, one million twenty-five thousand, seven hundred and forty-three and 33/100 ($1,025,743.33) dollars on which the tax assessed and claimed amounts to forty thousand, five hundred and sixteen and 86/100 ($40,516.86) dollars

was void, and therein specified the grounds upon which such claim was founded, to wit:

That the receipts from such business passing through, into or out of said State of California are gross receipts and earnings, from interstate business, and that any and all taxes, levied, assessed, based or computed upon such gross receipts from interstate business, or any part thereof, are a burden upon interstate commerce and a regulation of such commerce, to wit, commerce among the several states contrary to the provisions of subdivision 3, section 8
13 of article 1 of the Constitution of the United States, and also that said taxes levied, assessed, based or computed upon such gross receipts from interstate business, or any part thereof, are void for the further reason that they are assessed upon the income of property and business situated beyond the State of California, and to tax the same is to take property without due process of law in violation of section 1 of article 14 of the amendments to the Constitution of the United States.

XI.

Said sum of one million, twenty-five thousand, seven hundred and forty-three and 33/100 ($1,025,743.33) dollars, and the whole thereof, was received by the plaintiff for berths and seats, in its cars employed in transporting passengers in interstate commerce, used and occupied by persons while being transported in said cars from other states into said State of California, from said State of California into other states, and from other states through said State of California to still other states beyond the limits of California; and for the attendance and service of plaintiff's agents and servants in connection with such transportation; that said berths and seats were furnished and used and said attendance and service furnished
14 and performed partly in California and partly in another state or other states in journeys in plaintiff's said cars from one state to another, and that no part thereof was for such use entirely within said State of California or entirely within any other state, and that said sum and the whole thereof was receipts of the plaintiff from business conducted by it partly in one state and partly in another state or other states and carried on from one state into another state or states and that said business and the whole thereof in which said receipts were made and earned was commerce among the several states; that none of said earnings of one million, twenty-five thousand, seven hundred and forty-three and 33/100 ($1,025,743.33) dollars was receipts for berths, seats or for service in any way in the transportation of passengers between points in the State of California who in the journey passed out of said state; that the only earnings the plaintiff company had for such business was between January 1st, 1916, and December 31st, 1916, for berths and seats and service in connection with the transportation of passengers in two sleeping cars running between the City of Oakland in the said State of California and the Town of Susanville in said state, but in the course of the journey passing out of said state;

that the proportion of said earnings for berths and seats and
15 service in the transportation of passengers between points in
the State of California but in the course of the journey passing out of said state, based upon the proportion of milage within the said state to the entire mileage over which such business was done, amounted to one thousand, nine hundred and eighty-two and 61/100 ($1,982.61) dollars, which said sum is included in the sum of one million, fifty-three thousand, one hundred and forty-one and 34/100 ($1,053,141.34) dollars, the gross receipts of plaintiff on all of its said business beginning and ending entirely within said State of California, as herein alleged.

XII.

Said sum of one million, twenty-five thousand, seven hundred and forty-three and 33/100 ($1,025,743.33) dollars, and the whole thereof, was received by the plaintiff in interstate commerce as aforesaid, and was a proportion, as hereinbefore alleged, of income earned and received by plaintiff from the business conducted as aforesaid by plaintiff, to wit, the furnishing of berths and seats and attendance and service rendered by the agents and servants of plaintiff to persons who were transported in its cars principally and for the most
16 part while said cars were without and beyond said State of
California, and which said service was principally and for the most part performed without and beyond the limits of said State of California, and which cars were not, nor was any part thereof, situated in the State of California, except while employed in making trips upon railroads from one state to another, in the transportation of passengers into, out of, or through said State of California in commerce among the several states.

XIII.

That part of said tax of eighty-two thousand, one hundred and fifteen and 94/100 ($82,115.94) dollars so levied and assessed by said State Board of Equalization, to wit, forty thousand, five hundred and sixteen and 86/100 ($40,516.86) dollars, and the whole thereof, which was levied, assessed, computed and charged or either levied, assessed, computed or charged, upon said sum of one million, twenty-five thousand, seven hundred and forty-three and 33/100 ($1,025,743.33) dollars, and upon any and every part, portion or proportion of the gross receipts from plaintiff's said business, or any business passing through, into or out of said State of California, and passing from one state to another state, was and is a tax on the earnings of the plaintiff in its business conducted from one state to
17 another state or states, and was and is a tax on commerce
among the several states and a burden on such commerce under and by virtue of a statute of California, and was and is a tax on the conduct of said commerce and on plaintiff's right to engage therein in California, in violation of subdivision 3 of section 8, article 1 of the Constitution of the United States.

XIV.

That part of said tax of eighty-two thousand, one hundred and fifteen and 94/100 ($82,115.94) dollars so levied and assessed by said State Board of Equalization, to wit, forty thousand, five hundred and sixteen and 86/100 ($40,516.86) dollars, and the whole thereof, levied, assessed, computed and charged, or either levied, assessed, computed or charged, upon said sum of one million, twenty-five thousand, seven hundred and forty-three and 33/100 ($1,025,743.33) dollars, and upon any and every part, portion or proportion of the gross receipts from plaintiff's said business, or any business passing through, into or out of said State of California, and passing from one state to another state, was and is a tax on the income of property and business of the plaintiff situated without and beyond the State of California, and the enforcement of said tax against the plaintiff and said payment thereof required by said defend-
18 ant, as said Treasurer, as provided by said Statute of California, and as hereinbefore set forth, did in fact take from plaintiff its property and deprive the plaintiff of its property without due process of law, in violation of the provisions of section 1 of the fourteenth amendment to the Constitution of the United States, to wit, said sum of forty thousand, five hundred and sixteen and 86/100 ($40,516.86) dollars.

XV.

By the Statute of the State of California under which said tax was levied and assessed, plaintiff's right and privilege to continue to do intrastate business in said State of California is made dependent on the payment, on or before an hour and day fixed in and by said statute, of said tax so levied and assessed by said State Board of Equalization as aforesaid, amounting to eighty-two thousand, one hundred and fifteen and 94/100 ($82,115.94) dollars, which includes said sum of forty thousand, five hundred and sixteen and 86/100 ($40,516.86) dollars, so levied as aforesaid at three and 95/100 (3.95%) per cent on said sum of one million, twenty-five thousand, seven hundred and forty-three and 33/100 ($1,025,743.33) dollars receipts from plaintiff's said business in interstate commerce, as hereinbefore alleged; and in and by said stat-
19 ute it is provided that the right and privilege of plaintiff to transact intrastate business in said State of California shall be forfeited at the hour and day fixed in and by said statute for failure of plaintiff to pay to said State of California the taxes and money penalties as in said statute prescribed, which are the taxes hereinbefore set forth, including said tax levied on receipts from interstate commerce; and it is further provided in said statute that every person, after the hour and day so fixed and until said taxes and penalties are paid to said State, who transacts or attempts to transact any intrastate business in said state in behalf of any forfeited foreign corporation shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine or by imprisonment, or by both

such fine and imprisonment; and that every contract made in violation of said provisions was and is declared to be void; and in and by said statute plaintiff's right and privilege to continue to do intrastate business in said State of California or to transact any intrastate business therein or to contract was and is made dependent upon the payment of a tax, which said statute provides shall be levied, assessed, computed and charged upon the earnings of the plaintiff in interstate commerce and which was so levied, assessed, computed and charged thereon, and has been collected by the defendant,
20 as hereinbefore alleged, whereby a burden was imposed upon the interstate business of the plaintiff and upon commerce among the several states in violation of subdivision 3 of section 8, article 1 of the Constitution of the United States, the provisions of which the plaintiff expressly invokes; and plaintiff's right and privilege to continue to do intrastate business in said State of California or to transact any intrastate business therein, was and is by said statute made dependent upon payment of a tax upon income of property and business of the plaintiff without and beyond said State of California, levied, assessed, computed and charged thereon by and under a statute of said State of California, which said statute provides shall be levied, assessed, computed and charged upon such income of property and business of the plaintiff.

XVI.

After plaintiff paid to said defendant, as said Treasurer, as aforesaid, said sum of eighty-two thousand, one hundred and fifteen and 94/100 ($82,115.94) dollars, to wit, on said 10th day of August, 1917, at said City of Sacramento, plaintiff demanded of said defendant, as said Treasurer, that said sum of forty thousand, five hundred and sixteen and 86/100 ($40,516.86) dollars, paid under
21 protest as aforesaid, be returned and repaid to plaintiff, but said defendant, as said Treasurer, then and there refused and neglected to return or repay to plaintiff said sum or any part thereof. Neither said sum nor any part thereof has been returned or repaid to plaintiff.

Wherefore, plaintiff prays judgment against defendant as said Treasurer, for the sum of forty thousand, five hundred and sixteen and 86/100 ($40,516.86) dollars, with interest thereon from the 10th day of August, 1917, and its costs herein expended.

T. C. COOGAN,
BURKE CORBET,
Attorneys for Plaintiff.

G. S. FERNALD,
F. B. KELLOGG,
Of Counsel.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Frank L. Wood, being duly sworn, deposes and says: That he is an officer, to wit, superintendent, in and for the State of California, of the plaintiff in the above entitled action; that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge except as to the matters which
22 are therein stated on information and belief, and, as to those matters, that he believes it to be true.

FRANK L. WOOD.

Subscribed and sworn to before me this 13th day of February, 1918.

[SEAL.]

CHARLES R. HOLTON,
Notary Public in and for the City and County of San Francisco, State of California.

(Endorsed:) Filed Feb. 13, 1918. H. I. Mulcrevy, Clerk, by L. J. Welch, Deputy Clerk.

[Title of Court and Cause.]

Demurrer.

Now comes the above named defendant and demurs to plaintiff's complaint on file herein, and for ground of demurrer alleges:

That said complaint does not state facts sufficient to constitute a cause of action.

Wherefore defendant prays that plaintiff take nothing by its action and that defendant be hence dismissed with his costs.

U. S. WEBB,
Attorney General of the State of California;
RAYMOND BENJAMIN,
Chief Deputy Attorney General,
Attorneys for Defendant.

23 (Endorsed.)

Due service of the within demurrer admitted this 26th day of April, 1918.

T. C. COOGAN AND
BURKE CORBET,
Attorneys for Plaintiff.

Filed Apr. 26, 1918.
H. I. MULCREVY,
Clerk,
By J. F. DUNWORTH,
Deputy Clerk.

[Title of Court and Cause.]

Minute Order Sustaining Demurrer to Complaint.

Friday, November 15, 1918.

Present: Honorable Geo. A. Sturtevant, judge, and officers of the court.

In this action the demurrer of defendant to plaintiff's complaint on file having been heretofore fully argued and submitted and taken under advisement and all and singular the law and premises having been fully considered, it is ordered that said defendant's demurrer be and the same is hereby sustained with ten days' leave to plaintiff herein to amend its complaint.

[Entered in minutes of department No. 8, volume 129, page 81.]

[Title of Court and Cause.]

Judgment.

The above entitled action having been submitted to the court upon the complaint of plaintiff and the demurrer of defendant to plaintiff's complaint, and the court having on the 15th day of November, 1918, made and entered an order sustaining defendant's demurrer to plaintiff's complaint in the above entitled action, and granting plaintiff ten days after notice of such order sustaining defendant's demurrer in which plaintiff should, if it saw fit, amend its complaint, and notice of such order of the court was given to plaintiff by defendant on the 16th day of November, 1918, and plaintiff having failed within the time fixed by the court to amend its complaint in accordance with permission of the court,

Now, therefore, it is hereby ordered that plaintiff take nothing by its action and that judgment be entered for defendant with his costs.

Done in open court this 2nd day of December, 1918.

GEO. A. STURTEVANT,
Judge.

(Endorsed:) Filed Dec. 2, 1918. H. I. Mulcrevy, Clerk, by H. Brunner, Deputy Clerk. Recorded Dec. 3, 1918, 10.27 A. M., volume 123, page 417. H. I. Mulcrevy, Clerk, by Chas. A. Siskron, Deputy Clerk.

[Title of Court and Cause.]

Clerk's Certificate to Judgment Roll.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, H. I. Mulcrevy, county clerk of the City and County of San Francisco, State of California, and ex-officio clerk of the Superior

Court, do hereby certify the foregoing to be a true copy of the judgment entered in the above-entitled cause, and recorded in judgment book 123 of said court, at page 417. And I further certify that the foregoing papers hereto annexed constitute the judgment roll in said cause.

Witness my hand and seal of said Superior Court this 4th day of Dec., A. D. 1918.

[SEAL.]

H. I. MULCREVY,
Clerk,

By S. A. BLUM,
Deputy Clerk.

(Endorsed:) Filed Dec. 4, 1918. H. I. Mulcrevy, Clerk, by S. A. Blum, Deputy Clerk. Recorded judgment book 123, page 417.

26 [Title of Court and Cause.]

Notice of Appeal and Stipulation Waiving Undertaking on Appeal.

To Hon. U. S. Webb, Attorney General of the State of California, and Raymond Benjamin, Esq., Chief Deputy Attorney General, attorney for Friend W. Richardson, as Treasurer of the State of California, defendant, and H. I. Mulcrevy, Esq., clerk of the Superior Court in and for the City and County of San Francisco, State of California:

Please take notice that the plaintiff above named, The Pullman Company, does hereby appeal from the judgment and the whole thereof, rendered in open court on December 2nd, 1918, in the above entitled action, "that plaintiff take nothing by its action and that judgment be entered for defendant, with his costs," which said judgment was on December 4th, 1918, recorded in the office of said clerk aforesaid in volume 123 of judgment records at page 417.

T. C. COOGAN AND
CORBET & SELBY,
Attorneys for the Plaintiff, The Pullman Company.

27 Due and personal service of the foregoing notice of appeal admitted upon us this 30th day of January, A. D. 1919.

U. S. WEBB,
Attorney General of the State of California:
RAYMOND BENJAMIN,
Attorneys for Friend W. Richardson, as Treasurer of the State of California, Defendant.

And now, January 30, A. D. 1919, the undertaking on appeal in the foregoing cause, required by law to be given by The Pullman

Company, plaintiff and appellant, in order to perfect said appeal, be and the same is hereby by the defendant *hereby* waived.

U. S. WEBB,
Attorney General of the State of California;
RAYMOND BENJAMIN,
Attorneys for Friend W. Richardson, as Treasurer of the State of California, Defendant and Respondent.

28 *Stipulation to Transcript.*

It is hereby stipulated that the foregoing transcript on appeal is correct; that it contains full, true and correct copies of all the papers therein set forth now on file in the office of the county clerk of the City and County of San Francisco, State of California; that the minute orders therein contained are full, true and correct copies thereof as made and entered in the minutes of the Superior Court; that the said foregoing papers shall constitute the transcript on appeal in this cause and that the appeal may be heard and determined thereon.

Dated, March 31, 1919.

U. S. WEBB,
Attorney General of the State of California;
RAYMOND BENJAMIN,
Attorneys for Respondent.
T. C. COOGAN,
CORBET & SELBY,
Attorneys for Appellant.
F. B. DANIELS,
G. S. FERNALD,
Of Counsel for Appellant.

29 *Clerk's Certificate to Transcript.*

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, H. L. Mulcrevy, county clerk of the City and County of San Francisco, State of California, and ex-officio clerk of the Superior Court in and for said city and county, hereby certify that I have compared the foregoing transcript with the original papers in said action, now on file in my office, and with the orders therein made and entered on the minutes of said court, and that the papers and orders therein contained are full, true and correct copies of the originals on file in this office, and of the whole thereof.

I further certify that the erasures and interlineations appearing in the foregoing transcript were made before certifying thereto.

In witness whereof I have hereunto set my hand and affixed the seal of said Superior Court this — day of March, 1919.

[SEAL.] H. I. MULCREVY,
Clerk,

By —— ——,
Deputy Clerk.

(Endorsed:) Filed Jan. 30, 1919. H. I. Mulcrevy, Clerk, by W. S. Shafer, Deputy Clerk.

30 In the Supreme Court of the State of California.

S. F. No. 9085.

THE PULLMAN COMPANY, a Corporation, Plaintiff and Appellant,

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant and Respondent.

Petition for Writ of Error.

The petition of The Pullman Company, a corporation, Plaintiff and Appellant in the above-entitled action, respectfully shows unto your Honor:

That in said action, then pending in the Supreme Court of the State of California, entitled "The Pullman Company, a corporation, Plaintiff and Appellant, vs. Friend W. Richardson, as Treasurer of the State of California, Defendant and Respondent," a judgment was entered by the said Supreme Court of the State of California therein on the 4th day of April, A. D. 1921, in favor of the said defendant and respondent, and against the said plaintiff and appellant, which said judgment was duly entered in said Court upon the date aforesaid;

That the time within which a petition for a rehearing could be presented and filed in said action has now expired, and said judgment has become final;

That the said Supreme Court of the State of California is the highest Court of said state in which a decision could be had in this action;

That in the records, proceedings, and decision of said Court a manifest error has occurred, greatly to the damage of the said plaintiff and appellant, The Pullman Company, a corporation, and

31 said plaintiff and appellant was and is aggrieved thereby;

That, as appears in the records and proceedings in said action, there was drawn into question the power of the State of California, under its laws, to tax the gross receipts received by the said plaintiff and appellant, The Pullman Company, a corporation, for carrying passengers from one state to another, as being a tax on interstate commerce, and a tax upon the receipts from the business of the said The Pullman Company, a corporation, plaintiff and

appellant, in carrying passengers from one state to another state, and from business within the State of California to points outside of the State of California, and from points outside of the State of California to points within the said State of California, and from points without the State of California, passing through the State of California, to points outside of the State of California, and in violation of Paragraph 3 of Section 8 of Article I of the Constitution of the United States, reading as follows, to-wit:

"The Congress shall have power * * * to regulate commerce * * * among the several states;"

and there was also drawn into question the power of the State of California, under its laws, to levy, assess, compute, and collect a tax upon the income of the property and business of the plaintiff and appellant, situated beyond the State of California, as to tax the same was to take the property of the plaintiff and appellant without due process of law, in violation of Section 1 of Article XIV of the Amendments to the Constitution of the United States, reading as follows:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws;"

all of which fully appears in the records and proceedings in this action;

32 Your petitioner, the above named plaintiff and appellant, in and by its complaint filed in said action, contended that the gross receipts arising from the transaction of interstate commerce are not taxable by the State of California; that the taxation thereof constituted an unwarranted and unlawful interference with and burden upon interstate commerce, as well as a deprivation of your petitioner of its property without due process of law, and a denial to your petitioner of an equal protection of the laws, contrary to the provisions of the Constitution of the United States, which contentions, on the part of your petitioner, and each and all thereof, were, in and by the judgment of the Supreme Court of the State of California, hereinbefore referred to, decided against your petitioner; Wherefore, forasmuch as your petitioner believes that there was manifest error in said decision in said Supreme Court of the State of California against the several contentions of your petitioner, as hereinbefore set forth, and in the final judgment in said action, which is to the great damage of your petitioner, your petitioner prays that your Honor will examine the records of the Supreme Court of the State of California, in that behalf, and allow your petitioner a writ of error, and order a transcript of the records, proceedings, and papers upon which said judgment was rendered, duly authenticated, to be sent to the Supreme Court of the United States, to the end that said judgment and record may be brought before said

Supreme Court of the United States, agreeable to the laws of the United States in that behalf enacted.

BURKE CORBET &
CORBET & SELBY,
F. B. DANIELS,
G. S. FERNALD,
Attorneys for The Pullman Company, Plaintiff and Appellant.

Dated: June 30, A. D. 1921.

33 [Endorsed:] Original. S. F. No. 9085. In the Supreme Court of The State of California. The Pullman Company, a Corporation, Plaintiff and Appellant, vs. Friend W. Richardson, as Treasurer of the State of California, Defendant and Respondent. Petition for Writ of Error. Filed Jun. 30, 1921. B. Grant Taylor, Clerk, by M. Corbet & Selby, Attorneys at Law, 1201 First National Bank Building, San Francisco, California.

34 In the Supreme Court of the State of California.

S. F. No. 9085.

THE PULLMAN COMPANY, a Corporation, Plaintiff and Appellant,

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant and Appellant.

Assignments of Error.

Now comes The Pullman Company, plaintiff and appellant, and avers that the judgment rendered and entered in the above-entitled cause, by the Supreme Court of the State of California, on the 4th day of April, A. D. 1921, is erroneous and unjust to your petitioner, and that, in the record and proceedings therein, there is manifest error; and plaintiff and appellant files and presents the following assignments of error, upon which it will rely upon its prosecution of its petition for a writ of error in the above-entitled cause:

I.

The Supreme Court of the State of California erred in deciding that the complaint of the plaintiff therein, The Pullman Company, this plaintiff and appellant, does not state facts sufficient to constitute a cause of action, in that the said complaint does state a cause of action, viz.:

1. For the recovery of money by the plaintiff and appellant against the said defendant and respondent, the same having been paid under protest by the plaintiff and appellant as and for a tax levied, assessed, computed, and collected under Section 14 of Article

XIII of the Constitution of the State of California, as said Constitution was amended November 8, 1910, and under an Act of
35 the Legislature of the State of California, approved April 1, 1911, being Chapter 335 of the Statutes of California for said year, as amended February 3, 1913, being Chapter 6 of the Statutes of said State for said year, and as amended January 28, 1915, being Chapter 2 of the Statutes of 1915, and as required by said Chapter 335, as amended by Chapter 320 of the Statutes of 1913, approved June 12, 1913, upon the gross receipts and earnings from the said business of plaintiff and appellant passing through, into, and out of the State of California, and the gross receipts and earnings from interstate business, and that the same was a burden upon interstate commerce, and a regulation of such commerce, to-wit, commerce among the several states, contrary to the provisions of Subdivision 3 of Section 8 of Article I of the Constitution of the United States, reading as follows, to-wit:

"The Congress shall have power * * * to regulate commerce * * * among the several states";

2. That said taxes levied, assessed, based, and computed upon such gross receipts from the said interstate business, or any part thereof, are void for the further reason that they are assessed upon the income of property and business of the plaintiff and appellant situated beyond the State of California, and to tax the same is to take the property of the plaintiff and appellant without due process of law, in violation of Section 1 of Article XIV of the Amendments to the Constitution of the United States, reading as follows:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws;"

3. That the said tax was a tax on the gross earnings of the plaintiff and appellant in its business conducted from one state to another
36 state or states, and was and is a tax on commerce among the several states, and a burden on such commerce, under and by virtue of the laws of California, and was and is a tax on the conduct of said commerce, and on the right of plaintiff and appellant to engage therein, in California, in violation of Subdivision 3 of Section 8 of Article I of the Constitution of the United States, above referred to;

4. That said tax, so levied, assessed, computed, and charged by the said defendant and respondent was an imposition upon the interstate business of the plaintiff and appellant, upon commerce among the several states, in violation of the said Subdivision 3 of Section 8 of Article I of the Constitution of the United States, which said provisions were expressly invoked in said complaint by this plaintiff and appellant, and that the said right and privilege of plaintiff and

appellant to so transact intrastate business in said State of California was and is, by said laws of the State of California, made dependent upon payment of a tax upon gross receipts in part from interstate commerce, and upon income of property and business of the plaintiff and appellant without and beyond said State of California, levied, assessed, computed, and charged thereon by and under the statutes aforesaid of the said State of California, the laws of which said state, above referred to, provide that said taxes shall be levied, assessed, computed, and charged upon the income of property and the business of plaintiff and appellant, as aforesaid;

5. That the said plaintiff and appellant, in the manner and form, and at the times required by the laws of said State of California, above referred to, and under protest, did, prior to the commencement of said action, duly pay to the said defendant and respondent, as such Treasurer, the sum of Forty Thousand Five Hundred and Sixteen and 86/100 Dollars ($40,516.86), and that thereafter the said plaintiff and appellant did demand the repayment to it
36½ of the said sum so paid as aforesaid, which said demand was duly refused, and that the said sum of money had not been returned to this plaintiff and appellant, and demand for the repayment thereof was duly set forth in said complaint;

6. An action for the recovery of taxes claimed to be illegal and paid under protest is expressly provided for by the laws of California.

II.

The Supreme Court of the State of California erred in not reversing the judgment of the trial court, and in failing to give plaintiff and appellant its rights under the Constitution of the United States, as claimed and set forth in the record in said action.

Wherefore, for these and other manifest errors appearing in the record, the said The Pullman Company, plaintiff and appellant, prays that the judgment of the said Supreme Court of the State of California be reversed and set aside, and that judgment be rendered for the plaintiff and appellant, as prayed for in its said complaint, and for judgment for its costs.

BURKE CORBET,
CORBET & SELBY,
F. B. DANIELS,
G. S. FERNALD,
Attorneys for the Pullman Company, Plaintiff and Appellant.

Dated: June 30, A. D. 1921.

37 [Endorsed:] (Copy.) S. F. No. 9085. In the Supreme Court of the State of California. The Pullman Company, a Corporation, Plaintiff and Appellant, vs. Friend W. Richardson, as Treasurer of the State of California, Defendant and Respondent.

Assignments of Error. Filed Jun- 30, 1921. B. Grant Taylor, Clerk, by U. Corbet & Selby, Attorneys at Law, 1201 First National Bank Building, San Francisco, California.

38 In the Supreme Court of the State of California.

S. F. No. 9085.

THE PULLMAN COMPANY, a Corporation, Plaintiff and Appellant,

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant and Respondent.

Allowance of Writ of Error.

Now comes The Pullman Company, a corporation, plaintiff and appellant above named, on this 30 day of June, A. D. 1921, and files and presents to this Court its petition praying for the allowance of a writ of error, intended to be urged by it, and praying further that a duly authenticated transcript of the records, proceedings, and papers upon which the judgment herein was rendered, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had in the premises as may be just and proper; and, upon consideration of said petition, this Court, desiring to give petitioner an opportunity to test in the Supreme Court of the United States the questions therein presented;

F. M. A. It is ordered [by this Court]* that a Writ of Error be allowed, as prayed; provided, however, that said The Pullman Company, plaintiff and appellant, give a bond according to law in the sum of Five Hundred Dollars ($500.00), for damages and costs, said bond not to operate as a supersedeas bond.

Witness my hand this 30 day of June, A. D. 1921.

F. M. ANGELLOTTI,
Chief Justice of the Supreme Court of the State of California.

39 [Endorsed:] (Copy.) S. F. No. 9085. In the Supreme Court of the State of California. The Pullman Company, a Corporation, Plaintiff and Appellant, vs. Friend W. Richardson, as Treasurer of the State of California, Defendant and Respondent. Allowance of Writ of Error. Filed Jun. 30, 1921. B. Grant Taylor, Clerk, by M. Corbet & Selby, Attorneys at Law, 1201 First National Bank Building, San Francisco, California.

*[*Words enclosed in brackets erased in copy.]*

40 In the Supreme Court of the United States.

(S. F. No. 9085.)

THE PULLMAN COMPANY, a Corporation, Plaintiff in Error,

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant in Error.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Justices of the Supreme Court of the State of California, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the Supreme Court of the State of California, before you, or some of you, being the highest Court of law or equity of the said state, in which a decision could be had in the said suit between The Pullman Company, Plaintiff and Appellant, and Friend W. Richardson, as Treasurer of the State of California, Defendant and Respondent, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein any title, right, privilege, or immunity was claimed under the Constitution, or any treaty or statute of, or commission held, or authority exercised, under the United States, and the decision was
41 against the title, right, privilege, or immunity especially set up or claimed under such Constitution, treaty, statute, commission, or authority; a manifest error hath happened, to the great damage of the said plaintiff and appellant, The Pullman Company, a corporation, as by its Complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this Writ, so that you have the same in the said Supreme Court at Washington within sixty days from the date hereof, that the records and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Joseph McKenna, Senior Associate Justice of the Supreme Court of the United States, the 30 day of June, in the year of our Lord One Thousand Nine Hundred and Twenty-one.

Done in the City and County of San Francisco, with the Seal of the District Court of the United States, for the Northern District of California attached.

[Seal of the U. S. District Court, Northern Dist. of California.]

WALTER B. MALING,
Clerk of the District Court of the United States,
Northern District of California.

Allowed this 30 day of June, 1921.
F. M. ANGELLOTTI,
Chief Justice of the Supreme Court
of the State of California.

42 [Endorsed:] Original. No. —. In the Supreme Court of the United States. (S. F. No. 9085.) The Pullman Company, a Corporation, Plaintiff in Error, vs. Friend W. Richardson, Defendant in Error. Writ of Error. Filed Jun. 30, 1921. B. Grant Taylor, Clerk, by M. Corbet & Selby, Attorneys at Law, 1201 First National Bank Building, San Francisco, California.

43 In the Supreme Court of the United States.

(S. F. No. 9085.)

THE PULLMAN COMPANY, a Corporation, Plaintiff in Error,

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant in Error.

Bond on Writ of Error.

Know all men by these presents:

That we, The Pullman Company, a corporation organized under the laws of the State of Illinois, as principal, and Burke Corbet and John R. Selby, of the County of Santa Clara, State of California, as sureties, are held and firmly bound unto the above-named Friend W. Richardson, as Treasurer of the State of California, defendant in error, in the sum of Five Hundred Dollars ($500.00), to be paid to him, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our, and each of our, heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 29 day of June, A. D. 1921.

Whereas, the above-named The Pullman Company, a corporation, plaintiff in error, seeks to prosecute its writ of error in the Supreme Court of the United States, to reverse the judgment rendered in the

above-entitled action by the Supreme Court of the State of California.

Now, therefore, the condition of this obligation is such, that, if the above-named plaintiff in error shall prosecute its writ of error to effect, and answer all costs and damages that may be adjudged, if it shall fail to make good its plea then this obligation to be
44 void, otherwise to remain in full force and effect.

THE PULLMAN COMPANY,
A CORPORATION,
By BURKE CORBET,
Attorney.
BURKE CORBET. [SEAL.]
JOHN R. SELBY. [SEAL.]

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Burke Corbet and John R. Selby, whose names are subscribed as sureties to the above bond, being severally and duly sworn, each for himself, says: That he is a resident and freeholder of the State of California, and is worth more than the sum on said bond specified as the penalty thereof, over and above all his just debts and liabilities, in property not by law exempt from execution in this state.

BURKE CORBET.
JOHN R. SELBY.

Subscribed and sworn to before me, this 29 day of June, A. D. 1921.

[N. S.] H. B. DENSON,
Notary Public in and for the City and County of San Francisco, State of California.

This Bond approved this 30 day of June, A. D. 1921.
F. M. ANGELLOTTI,
Chief Justice of the Supreme Court of the State of California.

45 [Endorsed:] (Copy.) (S. F. No. 9085.) In the Supreme Court of the United States. No. —. The Pullman Company, a Corporation, Plaintiff in Error, vs. Friend W. Richardson, as Treasurer of the State of California, Defendant in Error. Bond on Writ of Error. Filed Jun. 30, 1921. B. Grant Taylor, Clerk, by M. Corbet & Selby, Attorneys at Law, 1201 First National Bank Building San Francisco, California.

46 In the Supreme Court of the United States.

(S. F. No. 9085.)

THE PULLMAN COMPANY, a Corporation, Plaintiff in Error,

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant in Error.

Citation.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Friend W. Richardson, as Treasurer of the State of California, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States, at Washington, D. C., within sixty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of California, wherein The Pullman Company, a corporation, is the Plaintiff in Error, and Friend W. Richardson, as Treasurer of the State of California, is the Defendant in Error, to show cause, if any there be, why the judgment rendered against the said Plaintiff in Error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Chief Justice of the Supreme Court of the State of California, this 30 day of June A. D. 1921.

F. M. ANGELLOTTI,
Chief Justice of the Supreme Court of the State of California.

Attest:

[Seal of Supreme Court of California.]

B. GRANT TAYLOR,
Clerk of the Supreme Court of the State of California.

47 City and County of San Francisco,
State of California, July 1, 1921.

We, the undersigned, Attorneys of record for the Defendant in Error in the above-entitled cause, hereby acknowledge due service of the attached citation, and enter an appearance for said Defendant in Error in the Supreme Court of the United States.

U. S. WEBB,
Attorney General for the State of California, Humboldt Bank Building, San Francisco, California;
RAYMOND BENJAMIN,
Chronicle Building, San Francisco, California, Attorneys for Friend W. Richardson, as Treasurer of the State of California, Defendant in Error.

48 [Endorsed:] Original. No. —. In the Supreme Court of the United States. (S. F. No. 9085.) The Pullman Company, a Corporation, Plaintiff in Error, vs. Friend W. Richardson, as Treasurer of the State of California, Defendant in Error. Citation. Filed Jun. 30, 1921. B. Grant Taylor, Clerk, by M. Corbet & Selby, Attorneys at Law, 1201 First National Bank Building, San Francisco, California.

49 In the Supreme Court of the United States.

No. —. (S. F. No. 9085.)

THE PULLMAN COMPANY, a Corporation, Plaintiff in Error,

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant in Error.

Præcipe.

To the Clerk of the Supreme Court of the State of California:

You are hereby requested that, in transmitting a true copy of the record of the Supreme Court of the State of California to the Supreme Court of the United States, pursuant to the Writ of Error heretofore granted, issued, and filed, as required by law, in the above-entitled action, you make up and incorporate into the transcript of the record on such Writ of Error the following portions of the record in said case in your office, namely:

1. Transcript on appeal to the Supreme Court of the State of California;

2. Petition for Writ of Error;

3. Assignments of Error and Prayer for Reversal;

4. Order Allowing Writ of Error;

5. Bond and Approval thereof;

6. Writ of Error;

7. Citation with admissions of service thereupon;

8. Stipulation of the parties as to elimination of the Opinion of the Supreme Court of the State of California from the transcript of the record, and consent to argument and consideration of this and other related cases in the Supreme Court of the United States at one and the same time;

9. This Præcipe, admission of service, and stipulation;

together with all endorsements of the filing thereof, as to each of said papers, showing the time of the filing of each of them in your office.

Dated: July 18, A. D. 1921.

F. B. DANIELS,
G. S. FERNALD,
BURKE CORBET,
JOHN R. SELBY,
Attorneys for Plaintiff in Error.

We do hereby admit service of the foregoing Request upon us at the City and County of San Francisco, State of California, this 19th day of July, A. D. 1921.

U. S. WEBB,
Attorney General of the State of California;
RAYMOND BENJAMIN,
Attorneys for the Above-named Defendant in Error.

We hereby stipulate and agree that the portions of the record in the above-entitled action, set forth in the foregoing Request of the attorneys for the Plaintiff in Error, are sufficient, and are all of the record of said action deemed necessary by us to be incorporated in the record on the Writ of Error in said action, and when so prepared by the Clerk shall constitute the transcript of the record on the Writ of Error aforesaid.

U. S. WEBB,
Attorney General of the State of California;
RAYMOND BENJAMIN,
Attorneys for Defendant in Error.

Dated: July 19, A. D. 1921.

51 [Endorsed:] No. —. In the Supreme Court of the United States. (S. F. No. 9085.) The Pullman Company, a Corporation, Plaintiff in Error, vs. Friend W. Richardson, as Treasurer of the State of California, Defendant in Error. Præcipe. Filed Jun- 30 1921. B. Grant Taylor, Clerk, by —— ——. Corbet & Selby, Attorneys at Law, 1201 First National Bank Building, San Francisco, California.

52 In the Supreme Court of the United States.

No. —.

(S. F. No. 9085.)

THE PULLMAN COMPANY, a Corporation, Plaintiff in Error,

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant in Error.

Stipulation.

Whereas, the following mentioned seven cases, now and heretofor pending in the Supreme Court of the State of California, viz., six thereof being entitled "The Pullman Company, a Corporation, Plaintiff and Appellant, vs. Friend W. Richardson, as Treasurer of the State of California, Defendant and Respondent," and being numbered in said State Court as S. F. Nos. 9080, 9081, 9082, 9083, 9084, 9085, respectively, and one of said cases being entitled "Walker D. Hines, as Director General of Railroads, and The Pullman Company, a Corporation, Plaintiffs and Appellants, vs. Friend W. Richardson, as Treasurer of the State of California, Defendant and Respondent", and being numbered therein S. F. No. 9183, were all heard, considered, and determined in the said State Court at one and the same time, and the said State Court did render its decision and opinion therein, in all of said cases, at one and the same time, which said decisions and opinions, so rendered, were identical in each of said cases; and,

Whereas, a Writ of Error to the said Supreme Court of the State of California, from the Supreme Court of the United States, has been allowed, issued, filed, and served, and made returnable to the said Supreme Court of the United States in each of said cases

53 according to law and the course of procedure and practice of the said Supreme Court of the United States; and,

Whereas, all of said parties in all of said cases deem it advisable to abridge the length of the transcript to be returned with said Writs of Error in each of said cases, consistent with the course of procedure and practice of the said Supreme Court of the United States, and that the said opinion of the said State Court in but one of said cases be taken to the said Supreme Court of the United

States, and that all of said cases be considered, heard, and determined upon said Writs of Error in the said Supreme Court of the United States at one and the same time;

Therefore, it is hereby stipulated and agreed, by and between the said respective plaintiffs in error and the said respective defendants in error, in each and all of said cases, that, with the return of the transcripts upon the return of said Writs of Error, in each of said cases, to the Supreme Court of the United States, there be incorporated in said case designated as S. F. No. 9080 a copy of the opinion and decision of the said Supreme Court of the State of California, hereinbefore referred to, and that a copy of the said opinion and decision in each of the other of said several cases be and the same is hereby dispensed with; and,

It is further stipulated and agreed that each and all of said several cases shall be heard, considered, and determined in the Supreme Court of the United States at one and the same time, said opinion and decision in said case designated as S. F. No. 9080 being considered as a part of the transcript of the record in this case;

It is further stipulated that this stipulation be incorporated in and become a part of the transcript of the record upon the return of each of said several writs of error in each of said cases,
54 upon the return of each of said transcripts of the said record in each of said cases to the Supreme Court of the United States.

Dated this 18 day of July, A. D. 1921.

F. B. DANIELS,
G. S. FERNALD,
BURKE CORBET,
JOHN R. SELBY,
Attorneys for the Plaintiff in Error.
U. S. WEBB,
Attorney General for the State of California;
RAYMOND BENJAMIN,
Attorneys for the Defendant in Error.

55 [Endorsed:] (Copy.) (S. F. No. 9085.) In the Supreme Court of the United States. No. —. The Pullman Company, a Corporation, Plaintiff in Error, vs. Friend W. Richardson, as Treasurer of the State of California, Defendant in Error. Stipulation. Filed Jun- 30, 1921. B. Grant Taylor, Clerk, by M. Corbet & Selby, Attorneys at Law, 1201 First National Bank Building, San Francisco, California.

56 S. F. 9085.

THE PULLMAN COMPANY, a Corp., Plaintiff, Appellant,

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant, Respondent.

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the *proceeding* and annexed is a true and correct copy of transcript on appeal in the above entitled case; original petition for writ of error; copy of assignment of errors; allowance of writ of error; original writ of error; copy of bond; original citation; præcipe; and stipulation as to record on writ of error, as shown by the records of my office.

Witness my hand and the Seal of the Court, this 28th day of July, A. D. 1921.

[Seal of the Supreme Court of California.]

B. GRANT TAYLOR,
Clerk,

By I. ERB,
Deputy Clerk.

Endorsed on cover: File No. 28,424. California Supreme Court. Term No. 469. The Pullman Company, plaintiff in error, vs. Friend W. Richardson, as treasurer of the State of California. Filed August 13th, 1921. File No. 28,424.